(Testimony of W. A. Foster.)

rectly; there has been no testimony that Mr. Brown took any eggs out of a crate.

"Mr. Hassler: Well, Mr. Brown, I didn't mean physically taking it out; I meant the egg after it was out of the crate. [3370]

"Q. You saw the eggs after they were out of the crate?

"A. I went down—I was going to make some mayonnaise dressing, and I went and got four or five or half a dozen, and I would reach in there and get them. The bad ones—I would know that is a bad egg, but to satisfy myself it was a bad egg, I would take and crack it and throw it right in the swill can, because the odor would run me right out.

"Q. You cracked the eggs—you have already testified that you cracked eggs? A. Yes——"

A lot of this is already in the record.

Were the questions and answers that I read, Mr. Faulkner, given at that deposition?

A. They were.

Q. Pardon me? A. They were.

Mr. Faulkner: That is all.

Mr. Pratt: That is all, Mr. Foster.

The Court: Step down.

Mr. Faulkner: Now, Mr. Pratt, is it your position still that you want the original deposition? You already have a copy that was taken from my possession and here is the——

Mr. Pratt: I am perfectly satisfied with the copy. I don't want to insist on anything that is

unreasonable or is going to deprive the Superior Court of its records.

Mr. Faulkner: Well, I mean I have always tried in trials in this court —— [3371]

The Court: Call a witness to the stand.

Mr. Faulkner: What shall we do?

The Court: Do whatever is agreeable to both sides. Proceed.

Mr. Faulkner: I would like to show the Jury the drawing of the mold on the egg testified to before Judge Goddell on May 8, 1944, Exhibit CY.

HENRY E. BERMAN

recalled; previously sworn.

Cross Examination (resumed)

Mr. Pratt: Q. Mr. Berman, I think when court adjourned for the noon recess I had been asking you something about Cheddar cheese. Now, the Cheddar cheese that you handled was manufactured by a subsidiary of Nye & Nissen, was it not?

A. Most of it was.

Q. What was the name of that company?

A. It came in from the Western Refrigerating Company.

Q. The Western Refrigerating Company?

A. That is right.

Q. Where was that located?

A. The Western Refrigerating Company itself is located in Petaluma. The cheese factory may

(Testimony of Henry Eugene Berman.)

not have been there, although at one time I believe they did make some cheese in Petaluma.

Q. And that cheese factory had a number designated by perhaps one of the California State Departments?

A. Yes, that is correct. All cheese factories have different designated numbers.

Q. And the number of this particular factory was what, do you remember?

A. I have heard it here in court. I think it has been 1621.

Q. 1621, did you say? A. That is right.

Q. When Cheddar cheese came to your branch of the company, city sales, it came from Nye & Nissen, did it not? A. Yes, it did. [3372]

Q. Did City Sales keep an inventory of Cheddar cheese on hand?

A. Yes, I believe part of the packs of City Sales consisted of an inventory.

Q. Do you know how much of an inventory was on hand of Cheddar cheese in April and May of 1944? A. I do not now.

Q. Your records would show, I imagine, would they not? A. Yes, they would.

Q. Now, when you got cheese—Cheddar cheese, I am talking about—there from Nye & Nissen it was invoiced to City Sales by Nye & Nissen Company, was it not?

A. That was the procedure.

Q. That was the procedure? A. Yes, sir.

(Testimony of Henry Eugene Berman.)

Q. And it was invoiced to you at a particular weight, is that right?

A. Yes, each invoice showed the weight.

Q. And that weight was determined how?

A. By tallying the weights on the individual cases of cheese.

Q. And the cheese was weighed, was it?

A. No.

Q. But the packages were marked?

A. Yes.

Q. Each case of cheese or box of cheese had on the outside the net weight of the contents, is that so? A. That is right.

Q. Of course, you have a record in your place of business of those invoices from Nye & Nissen to City Sales of this cheese, have you not?

A. Yes, Mr. Johnson and Mr. Magee have gone through those records.

Q. When you sold the Cheddar cheese, an invoice was issued [3373] again by Nye & Nissen Sales Division to the purchaser, is that right?

A. That is correct.

Q. And that was, say, in connection with the sales of cheese to the various ships of the War Shipping Administration, was it not?

A. Wherever cheese was sold, regardless of to whom, the weight was designated on the invoice.

Q. You have testified, I believe, that Cheddar cheese came in two forms—in wheels, as I have designated them, I think that you agree that is a proper designation, is that right?

(Testimony of Henry Eugene Berman.)

A. That is correct.

Q. And also in loaves?

A. That is correct, also.

Q. Now, you have described the way the wheels were packed, one, two or three to a box?

A. That is correct.

Q. How were the loaves packed?

A. The loaves were packed in one of two ways, either five loaves to a wooden case or six loaves to a fiber carton.

Q. In the wooden cases it was always five, was it? A. Yes, it was.

Q. What was the individual weight of these loaves? A. They also would vary.

Q. To what extent?

A. Each loaf could vary from slightly under five pounds to over six pounds.

Q. To over six pounds? A. Yes, sir.

Q. So you found, then, that a case or box of Cheddar loaf cheese containing five loaves might weigh as much as thirty pounds? [3374]

A. Or more.

Q. Or more? A. Yes, sir.

Q. But whatever the weight was it was invoiced to you, that is, to City Sales Division of Nye & Nissen as the actual weight?

A. That is correct.

Q. That is right, is it not?

A. That actual weight marked on the case.

Q. And then when you invoiced it, when Nye & Nissen, City Sales Division, invoiced it to the

(Testimony of Henry Eugene Berman.)

War Shipping Administration, it was invoiced at that same weight? A. Marked weights.

Q. And you say that the weights appeared on the boxes? A. Someplace on the box.

Q. At someplace on the box was the net weight of the contents of the box, is that right?

A. The supposedly net weight of the contents of the box, yes, sir.

Q. And it was your practice, was it not, to scrape the weights off of those boxes?

A. Not the weights. We scraped a great many marks off the boxes. The boxes were secondhand and they had numerous marks on them, legends of one kind or another, a designation as to possibly who had packed the cheese before, other than our own factory, and many other superfluous marks might have appeared on the case.

Q. And it was your practice to scrape all those marks and weights off the case, is that right?

A. All except the weights that would indicate the contents. [3375]

Q. But the weight of the contents as they were at the time—wasn't that also scraped off before delivery to the War Shipping Administration?

A. No, sir, that was not our intent.

Q. What is it?

A. That was not our intent.

Q. Well, was it your practice?

A. No, sir, it was not our practice.

Q. Was it ever done?

A. Not knowingly.

(Testimony of Henry Eugene Bermant.)

Q. Would it be possible to scrape weights off of the case unknowingly? A. Yes, it would.

Q. How could that happen.

A. Very easily.

Q. How?

A. The scraper is a little hand scraper, and if you set somebody to scraping the weights off the boxes, there is no knowing what that person might scrape off.

Q. It frequently happened then that all the weights were scraped off?

A. Not that I know of.

Q. Do you know of any case of Cheddar loaf cheese that were sent to the War Shipping Administration ships in which the weight still appeared on the case or box?

A. I would say in all instances.

Q. In all instances it appeared on the box?

A. Yes, sir.

Q. Was that true of fiber cases? Did the cheese in fiber cases have the weights on the box?

A. Yes, but the fiber cases were not constituted strong enough so that they could be used, and more often than not they would be new fiber cases, and the only thing appearing on them would be the legend and the [3376] marked weights.

Q. The weight at the time?

A. That is correct.

Q. Were those ever obliterated or scraped off in any way?

(Testimony of Henry Eugene Berman.)

A. Not unless there had been a change in the contents of the case.

Q. You said that they would not be reused?

A. No, they would not, but on occasion Nye & Nissen when receiving cheese would test weigh a package here and a package there, and if they should find a variance between the actual contents and the exterior mark, they would adjust that on the surface of the box.

Q. Do I understand that cheese coming from the Western Refrigerating Company, the subsidiary, cheese coming from that source was not weighed in your plant?

A. No, we still received cheese from the Western and we occasionally spot-checked the weights, even now.

Q. Otherwise, you assumed that the weights put on at the factory were correct?

A. That is correct.

Q. How about cheese coming from other sources, Cheddar cheese I am talking about.

A. We would possibly be a little more careful about that.

Q. Well, possibly. Did you in all cases in fact weigh it?

A. Not each individual package.

Q. You mean when a shipment would come in you would weigh a certain number of the cases, is that right? A. By sample.

Q. So as to determine by such spot-weighing whether the weights [3377] as a whole were correct?

(Testimony of Henry Eugene Berman.)

A. That would be the usual procedure.

Q. Was it the usual procedure?

A. That I do not know. I did not receive the merchandise.

Q. You were interested, of course, in having the weight of the cheese as you received it in the package the same as the weight of the package as it went out to your customers. That is a little bit abstruse. A. I believe I got your meaning.

Q. You wanted to have an accurate weight so far as your shipment to a customer is concerned?

A. I certainly would.

Q. Do you have in your place of business a record of the invoices that went out from Nye & Nissen to the War Shipping Administration during the months of April and May?

A. There must be.

Q. What record is there? Is there a copy of the invoices sent to the War Shipping Administration?

A. No, not a copy. The signed receipt of delivery would be in our possession.

Q. And that would indicate the weight of the cheese for which charge had been made?

A. That would clearly indicate it.

Q. And you have already said that you have a record of the invoices from Nye & Nissen to City Sales? A. That should also be in our records.

Q. And is that in the form of copies of the invoices?

A. I believe that is the way it would be.

(Testimony of Henry Eugene Berman.)

Q. Now, Mr. Berman, when you come back into court on Monday—— [3378] A. Tuesday.

Q. Will you kindly produce, bring with you the invoices from Nye & Nissen to City Sales from April 1st to May 12th, 1944, and also the invoices——

Mr. Faulkner: What are the dates? Because Mr. Berman has no control over them.

Mr. Pratt (continuing): ——and also the invoices of Nye & Nissen to the War Shipping Administration during that same period?

Will you please wait until I finish my question, Mr. Faulkner.

Mr. Faulkner: Will you give me the dates, Mr. Pratt, because the witness has no control over those.

Mr. Pratt: I said between April 1st and May 12th, 1944.

Mr. Faulkner: If Mr. Pratt takes that position, your Honor, we are quite willing to bring those records in here, representing that corporation, but they are not under the control of the witness. He is neither a director nor an officer of Nye & Nissen and has no control over their records. If Mr. Pratt will tell me what records he wants brought in, we will bring them in here. Or when we put a director or an officer on the stand he can bring them in.

The Court: Are the records available?

Mr. Faulkner: Yes, your Honor.

The Court: They will be produced? [3379]

Mr. Faulkner: Yes, if Mr. Pratt will tell me.

(Testimony of Henry Eugene Berman.)

what he wants we will do it. And I would like the privilege where it is convenient to have them photostated, so you can have your choice; give us enough time to photostat them, because we are working on those records as part of our defense. Is that agreeable, Mr. Pratt?

Mr. Pratt: You mean the original or the photostat?

Mr. Faulkner: Yes, and then you can put either one or the other in.

Mr. Pratt: I will take either one. I wouldn't certainly question your bringing in photostats.

Mr. Faulkner: We will bring them both in.

Mr. Pratt: Very will, bring both in and substitute a photostat.

Mr. Faulkner: Now, if you will tell us what you want——

The Court: You can arrange what you want at the proper time.

Mr. Pratt: I would like to put it in the record, if the Court please. It will take only a moment.

The Court: Very well.

Mr. Pratt: I would like the invoice or the record of invoices from Nye & Nissen to City Sales for Cheddar cheese, both wheels and loaves, from April 1st to May 12, 1944, inclusive; also similar invoices from Nye & Nissen to the War Shipping Administration covering the sales of Cheddar cheese, either [3380] wheels or loaves, between the same dates, namely, April 1st and May 12th, 1944, inclusive.

Mr. Faulkner: If you have a list of those from

(Testimony of Henry Eugene Berman.)

Mr. Johnson or Mr. Magee, a summary, we will be very glad to check that and agree on the figures, but if you want the invoices we will bring them in.

Mr. Pratt: We would like to have the invoices.

Mr. Faulkner: There are a lot of documents.

Mr. Pratt: There is where you are mistaken.

Mr. Faulkner: There are sixty-eight for one company in that period Mr. Nystrom covered, and over sixty on another, and that is not as long a period as you asked for.

The Court: You gentlemen will have all day tomorrow to check that and you come while you are resting tomorrow and get them. Proceed with this case.

Mr. Pratt: Q. Mr. Berman, do you recall the shipments of eggs to the steamship Hawaiian Shipper in December, 1944?

A. I had nothing to do with the deliveries to the Hawaiian Shipper at that time or any other time.

Q. You have no information in regard to that ship?

A. I never heard of the name before I came into court.

Q. And you had nothing to do, then, with the shipment of eggs onto that boat?

A. Nothing, whatsoever.

Q. In connection with your experience and your duties as head of the City Sales Division of Nye & Nissen, you came in contact [3381] with so-called peewee eggs, did you not? A. Yes, I did.

(Testimony of Henry Eugene Bernian.)

Q. You understand what is meant by a peewee egg, do you not?

A. I believe you referred to a peewee egg as being slightly smaller or in any degree smaller than a small egg.

Q. That is an egg that is below the minimum weight of small eggs?

A. I am not familiar with the exact minimum weights or maximum weights of any eggs, but I believe a peewee egg is smaller than a small egg.

Q. You are not familiar with the terminology of eggs both as to grade and weight?

A. Well, terminology, yes, but the actual weights, no.

Q. So far as prices of eggs are concerned they are controlled by grade and weight, are they not?

A. That is correct.

Q. So that when you put prices on the so-called hand tags you put those prices on in accordance with the O.P.A. rules, O.P.A. regulations, do you not? A. That is right.

Q. And therefore you must know what the grade and weight of the eggs is, do you not?

A. Not necessarily so.

Q. So far as peewee are concerned, they are not acceptable to the War Shipping Administration, are they?

A. I do not know whether they are or not.

Q. Were they in April and May of 1944?

A. I do not know that either.

Q. You say you do not know?

(Testimony of Henry Eugene Bernari.)

A. That is exactly what I said.

Q. And you did not know at that time?

A. No, sir. [3382]

Q. What do you do with peewee eggs at Nye & Nissens? A. We sell them.

Q. To the War Shipping Administration?

A. We did not.

Q. Why not?

A. Their purchase orders usually called for medium or large. If they had requested peewee eggs I imagine we would have filled the order for the same.

Q. Did you ever receive a purchase order for peewee eggs from War Shipping Administration?

A. Not that I know of.

Q. You know there were none, do you not?

A. Not positively.

Q. As a matter of fact, do you recall an interview that you had at your residence in August of 1944 with the F.B.I. agents, Mr. Magee and Mr. Johnson? A. Yes, I do, very well.

Q. Didn't you tell them at that time that you knew that peewee eggs were not acceptable under any circumstances to the War Shipping Administration?

A. I may have at that time. My recollection would be much clearer—would have been much clearer than it is now.

Q. Then whatever you said in that respect then was clearer in your mind and was a fact, is that right?

(Testimony of Henry Eugene Berman.)

A. I don't think I grasp the question.

Q. I will withdraw it. Now, you say you sell peewee eggs? A. We do.

Q. In what form? A. As peewee eggs.

Q. Didn't you break them? Wasn't it your practice to break them and sell them as frozen eggs meats or something of that [3383] sort?

A. No, sir.

Q. It was not?

A. I do not believe so. I had nothing to do with the breaking end of the business.

Q. And didn't you know what practice obtained in connection with the handling of peewee eggs?

A. We received so few peewee——

Q. I am asking the question, Don't you know what that practice was in regard to handling such eggs? A. I think I do.

Q. Well, what was it? A. To sell them.

Q. Wasn't it the practice to break them?

A. I don't know.

Q. You don't knew? A. Not for sure.

Q. On the occasion that I speak of when you were interviewed by the F.B.I. agents in August, 1944, didn't you tell them at that time that it was the practice to break all peewee eggs and use them as egg meats, frozen or otherwise?

A. At that time it may have been the practice.

Q. What I am asking is what the practice was in April or May of 1944?

A. You asked just what the practice was. I am sorry.

(Testimony of Henry Eugene Berman.)

Q. No, what was the practice in those months?

A. Peewee eggs?

Q. Yes.

A. I believe at that time some peewee eggs were being broken.

Q. What proportion of them was being broken?

A. Well, if they were all broken it would not amount to two cases a week, I believe.

Q. Didn't you tell these agents that all peewee eggs during that [3384] period were broken?

A. Possibly all two cases.

Q. And you say there were not more than two cases during that period of peewee eggs in your plant?

A. I say that with a slight reservation. What I am trying to bring out is, so few peewee eggs came into our plant that the amount was negligible as to any time.

Q. Now, a larger quantity of eggs are candled in your plant day after day, are they not?

A. I wouldn't say a large quantity, Mr. Pratt.

Q. During April and May of 1944 weren't a large quantity candled daily?

A. I can't recollect that for sure.

Q. And of the eggs that were candled in that plant weren't a lot of peewees discovered?

A. I don't believe so.

Q. And did you say a moment ago that there would not be more than a couple of cases during that period in April and May of 1944, a couple of cases of peewee eggs?

(Testimony of Henry Eugene Berman.)

A. I said that possibly not more than a couple of cases of peewee eggs would come into the plant as peewees.

Q. Well, if they did not come in as peewees they still might come in or be there and be discovered by means of candling in the plant, wouldn't they?

A. I had nothing to do with the candling.

Q. I am asking you the question whether that occurred? A. I don't know.

Q. How many cases of biddy eggs did you see there during the [3385] period that I have mentioned, April and May of 1944?

A. That would be impossible to answer. I may have seen none. I may have seen them and not realized that they were peewees. The eggs were in the cases.

Q. How many cases of peewee or small eggs—and by that I mean very small eggs—were there so far as you know in cases in your plant in April and May of 1944?

A. I would have to guess at that, Mr. Pratt.

Q. Well, guess at it. A. In what period?

Q. We will restrict it: Between April 24th and May 15th, 1944.

A. My guess would be five cases.

Q. There might have been five cases of peewees that you knew were there, is that right?

A. That is true.

Q. And how would you know that they were there? How did you know that they were there?

(Testimony of Henry Eugene Berman.)

A. I might have even sold some.

Q. To the War Shipping Administration?

A. Certainly not.

Q. Did you and Mr. Goddard ever discuss this question of peewee eggs?

A. In what manner?

Q. Did you ever discuss that in any manner in connection with them being there in your plant?

A. Mr. Pratt, twenty-five to thirty——

Q. Answer the question.

A. I am trying to, Mr. Pratt.

Mr. Sullivan: Let the witness answer.

The Witness: Twenty-five to thirty thousand cases of eggs would pass through our plant at once. Out of that, if there [3386] were ten cases of peewee eggs a month, it would be a lot. That certainly would be of no great concern to either Mr. Goddard and certainly not to myself.

Mr. Pratt: Q. Then your answer is you had no discussion with Mr. Goddard in connection with peewee eggs? A. Not that I can remember.

Q. Not that you recall. In the period between January of 1939 on to 1944 was a delivery of peewee eggs to the Navy ever made?

Mr. Faulkner: We object to that as not proper cross examination. There are no records in this case, either in the Government's case or in the direct examination of the witness, of the sale of peewee eggs to the Navy.

Mr. Pratt: I think I am entitled to ask this question, if the Court please, bearing on his knowl-

edge of the distribution and sale of peewee eggs to anyone.

Mr. Faulkner: There is no sale——

The Court: I will allow it. The objection is overruled.

Mr. Faulkner: Exception.

A. I have no means of knowing what was sold to the Navy or any other Government agency during any period with the exception of the War Shipping Administration from 1943 on. It did not come within my scope of employment or under my jurisdiction.

Mr. Pratt: Q. When you made out these hand tabs or hand tags—what do you call them?

A. I call them hand tag. Some people might call them a hand tab. [3387]

Q. When you made out these hand tags you indicated the price per unit, did you not?

A. Yes, I did.

Q. Where did you get that?

A. From a written schedule from a man ~~in~~ our office who did nothing else but inform us as to the O.P.A. prices that were given merchandise under a given description.

Q. Who was that?

A. Mr. C. H. Sommers.

Q. Mr. Sommers was the man who was operating at times under the name of C. H. Sommers & Company?

A. He may have. Prior to his employment with Nye & Nissen I know very little of Mr. Sommers.

(Testimony of Henry Eugene Berman.)

Q. Do you know that while he was employed by Nye & Nissen he also operated as C. H. Sommers & Company?

A. I doubt that. I am not sure of that at any rate.

Q. You do not know. Do you know when he went to work for Nye & Nissen?

A. Not as to the exact date.

Q. Well, about when?

A. He came to work for us while we were at 17th and Missouri, I believe. I do not think he worked for us prior to that time.

Q. And when did you move to 17th and Missouri? A. September, 1942.

Q. Do you know the date?

A. September is pretty close, Mr. Pratt.

Q. I am asking you if you know the date?

A. No.

Q. You do not. Do you say, then, that Mr. Sommers was not in [3388] the employ of Nye & Nissen before you moved into the 17th and Missouri plant? A. I don't believe he was.

Q. You do not recall, then, seeing him there in the Townsend plant?

Mr. Faulkner: I object to that as improper cross examination. The status of Mr. Sommers was never developed. This has no reference to the direct examination. He was a bookkeeper fixing O.P.A. prices. It is not within any element of the direct examination.

(Testimony of Henry Eugene Berman.)

Mr. Pratt: I won't pursue it any further anyway.

Mr. Faulkner: Then I will withdraw the objection.

Mr. Pratt: Q. After you had made out this hand tag and indicated the prices, were those prices checked in the office?

A. Mr. Sommers' job was to check those prices after the invoices were made out, yes, sir.

Q. Weren't they also checked by Mr. Moncharsh? A. No, sir.

Q. Did he have anything to do with fixing prices for the sale of your commodities to War Shipping Administration?

A. My prices were fixed by the O.P.A. ceiling prices.

Q. Did Mr. Moncharsh have anything to do with indicating the prices that were to be charged to the War Shipping Administration?

A. Not unless he indicated them to the O.P.A.

Q. So far as you know, did he have anything to do with indicating prices on your sales to the War Shipping Administration? A. He did not.

Q. Was he ever consulted about it by you?

A. I can't remember any specific time that he was.

Q. Do you recall that he ever was consulted?

Mr. Faulkner: We submit, your Honor, if Mr. Moncharsh consulted with Mr. Berman yesterday about a shipment to the War Shipping Administration it would not be within the issues of this case.

(Testimony of Henry Eugene Berman.)

Mr. Pratt: I am talking about the period covered in this indictment.

Mr. Faulkner: I beg your pardon. The question did not embrace the period covered in the indictment.

Mr. Pratt: All right. I will question him again to cover the period.

Q. Specifically to cover the period of April and May, 1944?

A. No. I believe at that time I was operating from the schedule furnished by Mr. Sommers.

Q. And before that time while you were in the Townsend Street plant who checked your prices on your hand tags?

Mr. Faulkner: We object to that because they *were dealing* with the War Shipping Administration when they were on Townsend Street. It was not in existence.

Mr. Pratt: If your Honor please, I believe it is entirely proper in cross examination to find out from this witness where the prices came from on the products that were being sold during the period of the indictment. [3390]

Mr. Faulkner: Prices to the War Shipping Administration. That is the basis of the examination on direct examination. That is the basis of your case. You asked where prices came from before there was even a War Shipping Administration in existence. We submit the objection is not proper cross examination.

The Court: Read the question, Mr. Reporter.

(Testimony of Henry Eugene Berman.)

(Question Read.)

The Court: You may answer.

Mr. Faulkner: Exception.

A. On Townsend Street I never sold anything to the War Shipping Administration.

Mr. Pratt: That is not the question. Will you read the question to the witness?

(Question re-read.)

A. I don't know if anybody ever checked the prices on the hand tags on Townsend Street.

Mr. Pratt: Q. Did Mr. Moncharsh ever check them?

A. I don't know if he did or not.

Q. Do you know that he did not?

A. I don't know either way.

Q. Mr. Sommers was not there at that time, was he?

A. No, sir, there wasn't any O.P.A. at that time either.

Q. Nevertheless, prices were controlled by something, were they not?

A. They were controlled by a market.

Q. Who indicated the market? That is what I want to know [3391] the market price at which you were selling?

Mr. Faulkner: Your Honor, this indictment is based upon a particular sale and delivery of eggs to the War Shipping Administration in April and May of 1944. There are no transactions that Mr. Berman is connected with testified to on his direct examination, nor testified to in the nine weeks that

(Testimony of Henry Eugene Berman.)

the Government took, about any sale that he had anything to do with. So when they go into the matter of prices on sales that they never mentioned in their trial and were never mentioned in our examination, I submit that is not proper cross examination.

Mr. Pratt: It is covered by the indictment.

Mr. Faulkner: There is not a single witness who ever said Mr. Berman filled a single order to any customer in the period from January, 1938, until a truck driver got on here and said he went down in 1944. You remained silent when you went in the field on your own case.

Mr. Pratt: On the other hand there is testimony here to the effect that this witness was down on the waterfront in connection with the delivery of eggs to the Navy.

Mr. Faulkner: We have no objection to any question, whether it was down on the waterfront to deliver eggs to the Navy, but the question how prices were made from year to year or from day to day by the company in 1938 to 1944, six years, never mentioned in the Government's case, never charged in the indictment, and never mentioned on direct examination, we submit is too far [3392] afield and it is not answered by the statement that Mr. Pratt wants to show that Mr. Berman went down to a pier. I have no objection to that.

Mr. Pratt: The indictment charges that the Government was defrauded in connection with prices, among other things, and we are entitled to ask this

(Testimony of Henry Eugene Berman.)

witness in connection with these allegations "this one defendant and said co-conspirator would misrepresent the grade, weight, and price of eggs delivered to the War Department and the United States of America War Shipping Administration."

Mr. Faulkner: He is not entitled to call a defendant unless he calls him for himself.

The Court: The Court is prepared to rule. Read the question, Mr. Reporter.

(Question read.)

The Court: You may answer. The objection will be overruled.

Mr. Faulkner: Exception, and I make a further objection that it is too general. When? It might have been 1932 or 1946.

The Court: You may answer the question yes or no and then you may fix the time.

A. I believe at that time prices were indicated by a published—a quotation published by poultry producers.

Mr. Pratt: Q. Published by what?

A. Poultry Producers [3393] of Central California.

Q. Was Mr. Moncharsh consulted in regard to prices at that time? A. He may have been.

The Court: The jury will take a recess for a few minutes.

(Recess.)

Mr. Pratt: Q. Mr. Berman, referring again to the interview which you had with the F.B.I. agents, Mr. Magee and Mr. Johnson, at your residence in

(Testimony of Henry Eugene Berman.)

August of 1944, did you not tell them in effect that Mr. Moncharsh checked the prices which were included in the billing to the War Shipping Administration?

A. I may have given them that answer, yes.

Q. That was the fact, then, was it not?

A. Well, the fact is the prices to the War Shipping Administration were set by the O.P.A. and the attendant regulations, which in many instances permitted dockage charges on War Shipping Administration deliveries. What I meant to convey, if I did not, was that I know that Mr. Moncharsh checked to see whether O.P.A. ceiling prices as given to us by Mr. Sommers were correctly calculated.

Q. I direct your attention to the so-called hand tag dated May 23, 1944, which relates to the delivery of produce to the steamship James Oliver. It is Exhibit CW. The handwriting on that is yours, isn't it? A. Yes, it is.

Q. I direct your attention to the check mark at the bottom of this tag, a check and the initial "M". Whose initial is that?

A. Mary Foudy. [3394]

Q. The "M" stands for Mary, does it?

A. Yes, it does.

Q. It does not stand then, for Moncharsh?

A. No, Moncharsh never used the sole initial "M" as designating his signature.

Q. What did he use? A. "A. M."

Mr. Sullivan: Pardon me. Which was it, Mr. Pratt, you were calling to the witness' attention?

(Testimony of Henry Eugene Berman.)

The Witness: May I explain that for your edification, Mr. Pratt?

Mr. Pratt: Q. Go ahead.

A. That check mark shows that the extensions and additions have been added correctly after Miss Robles had made the extensions and marked them down on the invoice.

Q. What position did Miss Foudy occupy at that time with the corporation, Nye & Nissen?

A. She worked for the corporation.

Q. She was an officer, was she not?

A. I wouldn't know that.

Q. Wasn't she the secretary of the corporation at that time?

A. I heard Mr. Hippeli just tell you that. That is as far as I know.

Q. Do you know anything about it?

A. No, I do not.

Q. Will you look at these other hand tags that are here in succession in this binder of exhibits? They follow down from Exhibit CW to CV, etc., down to CJ, inclusive. Will you look at the similar check mark on almost all of which it appears the [3395] check and the initial "M," and will you state whether those are all the check marks of Miss Foudy for the company?

A. The check marks "M" are identical in all instances, and I believe those are Miss Foudy. Her first name was Mary and that is the basis of my assumption.

Q. That is the basis of your assumption?

(Testimony of Henry Eugene Berman.)

A. Yes, sir.

Q. Do you know anything about it other than that?

A. No, sir, except that I know someone in the office always checked extensions. I am trying to remember if there was anybody else in the office that could possibly have used the initial "M" at that time. To the best of my recollection there was not.

Q. I want to direct your attention to Exhibit CJ, the hand tag relating to an order for delivery to the steamship John Muir dated April 24, 1944. That called for the delivery of 48 cases of medium double-A eggs, does it not?

A. Yes, it does.

Q. And the invoice that went to the War Shipping Administration likewise describes 48 cases of processed double-A eggs, does it not?

A. I believe it does.

Q. By the way, it is a fact, is it not, that all eggs delivered to the War Shipping Administration during April and May of 1944 were required to be processed, were they not?

A. It was our practice. I am not sure whether it was a regulation or not.

Q. Wasn't it required?

A. I do not know, Mr. Pratt.

Q. You do not know? A. No. [3396]

Q. You say it was your practice?

A. That is right.

(Testimony of Henry Eugene Berman.)

Q. You uniformly provided processed eggs, did you? A. Sir?

Q. And an extra charge was made for processed eggs, was it not?

A. I believe there was a regulation that permitted that extra charge to be made.

Q. An extra charge of a cent a dozen, wasn't it?

A. I believe that is the exact figure.

Q. Exhibit 64 is the purchase order for this shipment to the John Muir, is it not, calling for 48 cases of eggs—what does it say as to grade and size here? It is obscure, is it not, on this copy?

A. It is very. This copy calls for 35 cases of Grade A eggs, 1,050 dozen.

Q. And then the next item is what?

A. 13 cases of grade—it doesn't say——

Q. It is obscure?

A. It says, "grade processed eggs 450 dozen." The total is 48 cases.

Q. And the invoice to the War Shipping Administration for that shipment is Exhibit 65, is it not, describing 48 cases medium processed double-A eggs at 41 cents? A. That is right.

Q. Now, the routine whereby these eggs were sent to War Shipping Administration on the 25th of April, 1944, was by means of a truck driven by Nystrom, is that right?

A. The routine was for the eggs to be delivered by a truck. I don't know who drove the particular truck.

Q. You do not recall who delivered the eggs?

(Testimony of Henry Eugene Berman.)

A. No, I do not. [3397]

Q. But you do recall, do you not, the testimony of Colonel Hand that this shipment contained 38 cases of stamped eggs and 10 of unstamped eggs? Do you remember that?

Mr. Sullivan: That was not his testimony, Mr. Pratt. Colonel Hand's testimony was as to a certain lot of eggs that he saw at a certain place on the waterfront.

Mr. Pratt: Identified as the eggs that were taken there by Nystrom on that date.

Mr. Sullivan: Colonel Hand never mentioned Mr. Nystrom's name until the gentleman showed up in court.

Mr. Pratt: Very well, if the Court please, the eggs are identified, whether directly by the testimony of Colonel Hand or by the testimony of Nystrom.

The Court: Reframe your question if there is any question about it at all.

Mr. Pratt: Q. You recall Colonel Hand testified in connection with the examination of eggs on the steamship John Muir that he found 10 unstamped cases?

A. I remember Colonel Hand testified about the eggs on the John Muir. As to exactly what he found on that boat I can't remember offhand.

Q. And you recall that he stated that these 10 unstamped cases consisted of small eggs which were individually weighed and which he described as pewees?

(Testimony of Henry Eugene Berman.)

Mr. Faulkner: We object to that. What the witness recalls of the testimony of Colonel Hand is incompetent, irrelevant, and [3398] immaterial.

Mr. Pratt: I think not. This is a defendant in the case, if your Honor please.

Mr. Faulkner: What he remembers of the testimony of a witness that was called against him over a period of time when both the lawyers and the Court are at a loss to remember it, whether he can recall what a man testified to, we submit is not proper cross examination.

Mr. Pratt: If he can recall, I think we are entitled to it, if the Court please.

The Court: He may answer if he can recall.

A. I can't recall the exact testimony of Colonel Hand.

Mr. Pratt: Q. Then you do not recall that he stated that there were 10 cases of peewees in that shipment?

Mr. Faulkner: I object to that as not proper cross examination, your Honor.

Mr. Pratt: I think it is entirely proper cross examination, particularly of a defendant.

Mr. Faulkner: His recollection of testimony in the courtroom? I think that is entirely improper.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: He may answer whether or not he recalls.

Mr. Faulkner: Exception.

A. I do not recall that. [3399]

(Testimony of Henry Eugene Berman.)

Mr. Pratt: Q. And at that time, namely, on the 24th of April, 1944, when eggs were delivered to the steamship John Muir in accordance with your hand tag, were there 10 cases of peewee eggs in your plant at that time? A. That I doubt.

Q. Now, I direct your attention to the steamship Josiah Royce. You have testified that you have a recollection of the incident in connection with the shipment of eggs to the steamship Josiah Royce, have you not? A. Yes, I do.

Q. Now, do you recall that a telephone call came to you in connection with that shipment from the steward on the ship?

A. Yes, I recall that a telephone conversation——

Q. That came to you personally, did it?

A. It ended up with me personally.

Q. And that was Mr. Ammdsen, was it not?

A. At that time I did not know his name, but apparently it was.

Q. And he told you that the eggs were so small that they were not acceptable, did he not?

A. I think the gist of the conversation was that the eggs were unstamped.

Q. Didn't he also say that they were too small to be acceptable in effect?

A. I think he said that the eggs were small.

Q. And didn't those eggs then come back to your plant to your own personal attention?

A. They came back to the plant, not particularly to my own personal attention.

(Testimony of Henry Eugene Berman.)

Q. Didn't Nystrom bring them back and tell you of the incident that had occurred there at the dock where the Royce was berthed? [3400]

A. No, by the time Nystrom got back with the eggs I knew all about the incident.

Q. And you knew they were peewee eggs, didn't you? A. I certainly did not.

Q. Did you examine the eggs after they were brought back by Nystrom? A. No, I did not.

Q. Why didn't you examine them to determine what the situation was in fact?

A. Because in fact Mr. Amundsen complained that he wanted large eggs on that boat. I knew the eggs he got were medium eggs.

Q. Didn't you know as a matter of fact that they were small eggs, even peewee eggs on that shipment?

A. As a matter of fact I did not.

Q. And those same 10 cases of eggs which were returned by Nystrom from the Josiah Royce, those identical 10 cases of rejected eggs were put on the Cape Pillar the next day, were they not, at your direction?

A. They were not, not that same 10 cases.

Q. Not those same cases?

A. Not those same 10 cases.

Q. Now, so far as these 10 case are concerned, when was the first you knew that they were characterized as peewee eggs?

A. When I came here in court and heard the testimony.

(Testimony of Henry Eugene Berman.)

Q. That was your first knowledge, was it?

A. Yes, sir.

Q. Now, you say that the eggs that you sent to the Cape Pillar were not these identical 10 cases, among others?

A. I am [3401] pretty sure they were not.

Q. How do you know that they were not?

A. Because the eggs that went to the Cape Pillar were inspected eggs.

Q. What did you do with these 10 cases that came back from the Royce which had been rejected?

A. What did I do with them? I didn't do anything with them personally.

Q. What disposition did you direct to be made of them?

A. Put them back in inventory.

Q. In what category or classification of eggs?

A. They probably went over with the unstamped mediums.

Q. You knew they had been declared by the steward of the boat to be small eggs, didn't you?

A. Only in comparison with large eggs.

Q. So you assumed then that they were medium eggs, did you?

A. That would be my assumption.

Q. And was there a label on them, your green baldy-egg label, indicating that they were medium eggs? A. There probably was.

Q. And that was also true of these eggs that went to the Cape Pillar the next day, was it not?

(Testimony of Henry Eugene Berman.)

A. What was true?

Q. That there was the green label on them indicating medium eggs in size?

A. Well, the green label did not particularly indicate that the eggs were medium, although the green label is an indication of medium eggs. We labeled all our cases; at the country plant we put eggs in labeled cases. It was just [3402] a means of identification as to who the packer was. We were past the stage where we were selling eggs by grade labels.

Q. Wasn't it customary to put the green labels on medium sized eggs?

A. It would be the intent in the packing plant, but I very often seen mediums in blue cases, large in green cases, and any kind of eggs in red labeled cases.

Q. On the green label wasn't there a stamp, a rubber stamp indicating the size of the eggs, "medium"? Weren't they always that?

A. Not always, no, sir.

Q. As a matter of fact, the green label ordinarily indicated medium in size, did it not?

A. Ordinarily it did.

Q. Now, so far as the eggs on the Cape Pillar are concerned, there were 45 cases. I think you have identified the hand tag on them, have you not?

A. I have identified the hand tag. I can't tell right now how many cases were involved.

Q. Do you recall that an examination of 10

(Testimony of Henry Eugene Bernian.)

cases of those eggs on the Cape Pillar showed that they were peewee eggs?

A. I do not recall that. I recall an examination——

Mr. Faulkner: An examination of a single case showed they were peewee eggs in all of your witnesses' testimony. I object to the question on the ground it misstates the record. The record shows in respect to all of these items that they all exceeded the minimum grade of a small egg, and when you abandon the small egg method of determining the character of the egg, the weight of eggs run from 32 *points* and some ounces up to in [3403] excess of 34 pounds. You like to call them peewees, but the record shows that the eggs are small eggs.

Mr. Pratt: If the Court please, any egg that is less than 40 pounds is not a medium egg. Any egg that is less than 34 pounds net is a peewee egg. And the small egg, slightly over the minimum weight, would be regarded as a small egg.

The Court: Read the question, Mr. Reporter.

(The last question was read by the Reporter.)

The Court: The question and answer will stand. Proceed.

Mr. Pratt: Q. Now, I direct your attention to the steamship Cape Charles.

Mr. Faulkner: Pardon my objection. Mr. Pratt delights in this word "peewee."

The Court: There is nothing before this Court.

(Testimony of Henry Eugene Berman.)

Mr. Faulkner: I want to ask the Court and make a motion to the Court. I will ask the Court to instruct the jury to disregard any reference by Mr. Pratt to the word "peewee." The slip of Colonel Hand, a copy of which I have here, designates all the eggs that he handled on that occasion as small.

The Court: The motion will be denied. Let us proceed, gentlemen.

Mr. Faulkner: Exception.

Mr. Pratt: Q. In grading eggs in your plant there by means of candling by your young women who did that work, do you know that it was customary to put in the top of the case where [3404] the eggs were of the peewee class a slip of cardboard upon which the candler made the notation "peewee"?

Mr. Faulkner: We object to that as not proper cross examination. This witness has given no testimony with relation to the method of candling eggs in the plant of Nye & Nissen.

Mr. Pratt: He is the man who is responsible for the delivery of eggs at the waterfront for the War Shipping Administration, and I believe we are entitled to cross examination on the question of peewee eggs.

The Court: The objection wil be overruled. Let the Reporter read the question.

(Question read.)

Mr. Faulkner: Exception.

(Testimony of Henry Eugene Berman.)

A. I do not know what was customary. I had very little to do with the candling.

Mr. Pratt: Q. Did you ever see such a card in a case of eggs?

A. I may have a good many years ago.

Q. I am asking you during the period of April and May 1944, whether you ever saw such a card?

A. I don't believe I would have at that time.

Q. Did you have occasion to see the inside of any of these cases of eggs that you were handling?

A. Only if they happened to be open.

Q. Only when they happened to be open?

A. Yes.

Q. When were they open?

A. When were they open? [3405]

Q. When did you have occasion to examine them before they were open?

A. It would not be a matter of the occasion of examining them. There might be an open case there and I might observe it as I went around in my duties at the plant.

Q. And your examination would be for what purpose?

A. It would not be an examination for any purpose. I said I might happen to observe them.

Q. Have your ever seen a card such as I have described in a case of eggs after it had been candled in your plant?

A. I think not, after it had been candled in our plant.

(Testimony of Henry Eugene Berman.)

Q. You think you never saw such a card after the candling, is that right?

A. I am not reluctant to answer. I am trying to gather my thoughts and answer correctly. Not in our plant, no, sir.

Q. Have you seen such cards in cases of eggs that came from other plants to your plant?

A. Yes, I may have.

Q. From what plant?

A. From our outside plants, possibly, but not in 1941.

Q. When did you see such cards?

A. It would have been back on Townsend Street.

Q. You recall, do you not, that it was the practice to put such cards in case of peewee eggs?

A. That practice might have been employed in the country packing plants, and what their practice was I do not know. I have been in the country packing plants on very few instances. [3406]

Q. Does that relate to the plant at Petaluma?

A. Petaluma, Santa Cruz, or wherever the plant might be.

Q. Directing your attention to the fact that the evidence shows that peewee eggs were found on the following boats: John Muir, Josiah Royce, Cape Pillar, Cape Charles, Gilbert Hitchcock, Henry White, Philippa, William Coulter, the Francis W. Parker, the Cape Breton, and the Oliver, how do you explain the fact that there were these small eggs on those ships?

Mr. Faulkner: If the Court please, we object to

(Testimony of Henry Eugene Berman.)

the form of the question because the evidence does not show that there were peewee eggs on the ships that you have mentioned. It assumes something not in evidence. It is also an improper and argumentative method of cross examination.

Mr. Pratt: The record, I believe, will support my statement that on each of these boats there were eggs found by the officers, the experts who examined them. There were eggs found on each of these boats that they have described as peewee eggs. [3407]

Mr. Faulkner: But the weights that were indicated on the card—Colonel Hand came in and said the eggs were "Peewee" eggs. The card was shown to him and he weighed them as Small eggs.

The Court: I will let it go in.

Mr. Faulkner: I object to it as an improper form of question and assuming something not in evidence.

The Court: Read the question, Mr. Reporter.

Mr. Faulkner: And in addition to that, your Honor, Major Evans testified to any number of cases.

The Court: The Jury heard the testimony of the Major and all the other witnesses. Let them determine the matter.

Read the question, Mr. Reporter.

(Question read.)

Mr. Faulkner: We object to the form of that question because that is not this record. There is no foundation to his asking the question with re-

(Testimony of Henry Eugene Berman.)

spect to Small eggs on those ships and an explanation of how Small eggs got there.

The Court: It is a compound question, and I am not prepared to say that they were found on all of these shipments. I do not recall the testimony in detail myself, but if there is any question about it you may connect each and every one of them if you wish.

Mr. Pratt: I do not want to take that time, if the Court please. I will reframe the question to this effect: [3408]

Q. Directing your attention to the fact that eggs were described on all of the boats that I have mentioned, namely, the John Muir, the Josiah Royce, the Cape Pillar, Cape Charles, Gilbert Hitchcock, Henry White, Phillipa, William Coulter, the Francis W. Parker, the Cape Breton and the Oliver, described by the experts who examined them on the ship as being either "Peewee" or very small eggs, how do you explain that fact in light of the statement that you make that there were no such eggs to your knowledge in the plant?

Mr. Sullivan: If the Court please, I make an objection to that again on the ground it does not properly state the evidence in the record. The evidence in the record is this witness had nothing to do with three of the ships which Mr. Pratt named, and if he is going to ask him a question like that, in the interest of fairness to the witness, he should limit it to the activity in which the witness participated, having in mind your Honor's ruling.

Testimony of Henry Eugene Berman.

The Court: I think you can cover the subject matter by a general question.

Mr. Sullivan: But he names ——

The Court: I am directing my remarks to Counsel for the Government. Withdraw your question. Reframe your question.

Mr. Pratt: Q. Directing your attention to the steamship John Muir, in connection with which the expert witnesses of the Government described eggs on that ship as Small or "Peewee". [3409] how do you explain that fact?

A. Up until the time I came into court and heard the testimony I would not be able to explain it. Right at present I think I know.

Q. All right, what is the explanation?

A. I think definitely in my mind that Nystrom connived to get those eggs on that truck.

Q. You said there were no such eggs in the plant that you knew of except a couple of small cases.

A. I said Small or Peewees. When you modify it to that extent, we did have Small eggs in our plant, but not as many "Peewees" as you infer there.

Q. Referring to the John Muir, I call your attention to the testimony of Colonel Hand, who said there were ten cases of "Peewees" on the John Muir. How do you explain that fact?

A. I was not there when Colonel Hand inspected those, and I do not know whether there were "Peewees" there or not.

Q. You suggested that there was some collusion

(Testimony of Henry Eugene Berman.)

between Nystrom and somebody else to put ten cases of "Peewees" on that boat?

A. I don't know whether there were ten cases of "Peewees" on that boat or not. As far as the collusion, yes, I would say I believe there was collusion somewhere.

Q. Between Nystrom and whom?

A. Nystrom and somebody. I don't know who.

Q. Do you charge that he was in collusion with the FBI agents? A. I do not. [3410]

Mr. Faulkner: We object to that as not proper cross-examination, your Honor.

The Court: The evidence disclosed that this witness testified that there was some collusion. He has a right to pursue it and find out what if anything——

Mr. Faulkner: He asked for a reason. It is not proper to ask a man to argue his own case on the witness stand.

The Court: Maybe I misunderstood. Read the question.

(Question read.)

The Court: Let the question and answer stand.

Mr. Pratt: Q. With whom was he in collusion?

Mr. Faulkner: I object to that, if the Court please. There isn't any requirement on a defendant to state any charge against the FBI agent or anybody else.

The Court: The objection will be overruled. He may answer.

(Testimony of Henry Eugene Berman.)

Mr. Faulkner: Exception.

The Witness: I didn't hear the question.

The Court: Read it, Mr. Reporter.

(Question read.)

The Witness: A. I don't know particularly with whom he was in collusion, and when I state I do not, in reference to the FBI agents, I do not know whether there was any collusion between Nystrom and the FBI agents to accomplish that. I said that I believe Nystrom connived somehow to get those eggs on [3411] there, whether it was his intent, his own purpose, or with somebody else's help. That I don't know.

Q. Where did the eggs come from?

A. Where did they come from?

Q. The eggs that went on that ship?

A. They were very apparently our property.

Q. They came from your plant?

A. Very apparently so.

Q. And contained your labels, did they not?

A. No doubt.

Q. Now, how about the eggs on the Royce and Pillar of the same character? How did those eggs come to get on that ship?

A. You asked me a general question. My answer stands for all those boats involved.

Q. So you charge that there was some sort of connivance or collusion between Nystrom and someone else to put on these ships eggs that would embarrass your corporation, is that it?

Mr. Faulkner: I submit, your Honor, that is

(Testimony of Henry Eugene Berman.)

not proper examination of a witness, to get a witness on the stand who is a defendant in the case, to interrogate him as to the facts, to ask him how eggs got on there, and then to say, "What is the reason?" Or, "Do you charge or do you connect a driver?" Now, then, the evidence in this case shows that Mr. Nystrom went into the employ of the firm of Nye & Nissen, and then some time in April, prior to the 24th, he had a contact with the FBI, and then on the 13th of May these bad deliveries ceased. Now, anyone might draw that inference. The lawyer might argue [3412] that if he draws it. But I submit it is not proper cross-examination to ask the defendant to argue his own case from the witness stand.

The Court: Read the question, Mr. Reporter.

(Question read.)

Mr. Faulkner: We are not charging anybody with anything.

The Court: The Court is prepared to rule. The objection will be overruled. He may answer.

Mr. Faulkner: Exception.

(Question reread.)

The Witness: A. By connivance, I believe that my interpretation of the word would mean that he could connive within himself to do it, or with the help of others. What actually happened I am not prepared to say. I do not know.

Mr. Pratt: Q. So far as the eggs on the steamship Cape Breton are concerned, they were delivered by Ransom, weren't they?

(Testimony of Henry Eugene Berman.)

A. I do not know.

Q. The records of your company that you have produced here, including these hand tags, show that a quantity of eggs, 45 cases, were delivered to the Cape Breton, do they not?

A. I don't know, Mr. Pratt. The Cape Breton was no concern of mine. It was not one of my boats.

Q. It was not one of your boats?

A. No sir.

Q. So you know nothing about the Cape Breton?

A. No sir.

Q. Now, on the Hitchcock and Henry White, have you made any [3413] explanation of how the Small eggs or "Peewee" eggs got on those boats?

A. No sir.

Mr. Faulkner: We object to that as argumentative and not proper cross-examination.

The Court: If he knows he may answer. The objection will be overruled.

Mr. Faulkner: Exception.

The Witness: A. Mr. Pratt, those steamship companies were the backbone of the City Sales business. It would have been silly for me and of no financial profit to myself or the firm to get any eggs on that boat other than the eggs intended for the boat in the first place.

Q. So that if "Peewee" eggs or Small eggs got on that boat that were improperly labelled, they got on, did they, through some collusion of somebody? Is that your answer?

(Testimony of Henry Eugene Berman.)

Mr. Faulkner: We object to this form of examination, your Honor, as not proper cross-examination.

The Court: I will allow it.

Mr. Faulkner: Exception.

The Court: The objection is overruled.

Mr. Faulkner: May I have the question read?

(Question read.)

Mr. Faulkner: It is purely argumentative, your Honor, that question, and I supplement that——

The Court: The Court has ruled. You may answer. [3414]

Mr. Faulkner: Exception.

The Witness: I believe the interpretation of the word "collusion" would have to mean that Nystrom was acting together with other people. When I said connived I meant that Nystrom might have been doing that on his own hook, and I still firmly believe that that was the case. In all these instances there was no financial profit to get those Small eggs on those boats for myself or for Nye & Nissen either, so why would we do it? We were trying to build up the goodwill of those companies for future business. It was the means of my livelihood.

Q. When did you first find out, or when were you first advised that there was being some examination of these eggs delivered by you to these various steamships of the War Shipping Administration?

A. It was much later—much after this incident.

(Testimony of Henry Eugene Berman.)

Q. Can you give approximately when you found that out?

A. I think just shortly before the FBI came to interrogate me at my home.

Q. When did they come to see you?

A. You said it was in August, 1944. I am willing to accept that date.

Q. How much previous to that was it that you learned that shipments were being examined?

A. Oh, I didn't learn that shipments were being examined. I learned that shipments had been examined. [3415]

Q. Then you did not learn it while it was being done, is that it? A. No sir, I did not.

Q. Now, you heard the testimony in regard to the character of eggs that were delivered to the steamship Oliver, which was on the 23rd of May, was it not? A. I believe that was right.

Q. That is the date on your hand tag?

A. I think so.

Q. At that time Nystrom was not in your employ, was he?

A. No, Nystrom left before this.

Q. Now, the character of eggs on that boat was determined by Major Evans, do you recall, in his testimony?

A. It was either Colonel Hauf or Major Evans. I recall the testimony.

Q. Now, the eggs on that ship in the first place were described as not processed. They were given no grade because they were fifteen percent U. S.

(Testimony of Henry Eugene Berman.)

Light Dirty, 18.6 percent Dirty, and otherwise of such a character that they could not be graded at all. I direct your attention to the invoice in that case relating to your hand tag Exhibit No. CW, that the eggs sent to that ship consisted of 8 cases Processed AA eggs with a rubber stamp "Inspected by W.F.A.," does it not?

A. Yes, that is what the invoice indicates and calls for.

Q. You heard the testimony of Major Evans as I have indicated it, that the eggs on that ship were no-grade and they were fifteen percent U. S. Light Dirty and 18.6 percent U. S. Dirties? [3416]

Mr. Sullivan: Just a minute, if the Court please. We object to that question. It is improper in form. It is argumentative. It is the testimony of Mr. Pratt, not a question of the witness.

The Court: The Court is prepared to adjourn now until Tuesday morning at 10:00 o'clock. Keep in mind the admonition of the Court heretofore given you and return at 10:00 o'clock Tuesday morning. The jurors may be excused.

(Thereupon an adjournment was taken until Tuesday, March 26, 1946, at 10:00 o'clock a.m.) [3417]

Tuesday, March 26, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

Mr. Sullivan: Ready.

Mr. Pratt: Ready.

The Court: Waive the roll call, stipulate all the jurors are seated in the box. You may proceed, gentlemen.

HENRY EUGENE BERMAN,

recalled.

Cross Examination (Resumed)

Mr. Pratt: Q. Mr. Berman, I think at the time court adjourned on Friday I had just started asking you a question or two about the eggs that were ordered, the eggs that were delivered on board the steamship Oliver; do you recall?

A. Yes, I do, Mr. Pratt.

Q. Now, your hand tag relating to that boat is Exhibit CW, is it not? A. That is correct.

Q. And the hand tag, as you have testified before, indicates the order for these eggs to be delivered on that ship; that is right, is it not?

A. It indicates the delivery.

Q. It indicates the delivery? A. Yes, sir.

Q. And it was made simultaneously, practically simultaneously with the invoice that went to the company, went to the shipping company or to the Government; that is right, is it not?

A. You mean the yellow tag was made simultaneously? [3418]

Q. About the same time.

(Testimony of Henry Eugene Berman.)

A. Yes, probably previous to the time the typewritten invoices were made in the office.

Q. The typewritten invoice was made from this?

A. That is right, all within possibly a few minutes.

Q. That was the universal custom?

A. That is right, that was our custom.

Q. And it called for eight cases processed AA eggs? A. Mediums, yes, sir.

Q. Eight cases Medium Processed AA eggs, and these eggs—the same eggs, I think, are indicated, are they not, on page 10 of your book, here, which is——

A. Here is a stamp on the inside cover, Mr. Pratt.

Q. Defendants' Exhibit CX-1, 10 pages, and it is on the 10th page, the second item, is it not?

A. Yes, that is it.

Q. Now, the initials of the inspector are at the left, and whose initials are those? A. G.C.R.

Q. That is Mrs. Reed, the inspector?

A. That is right.

Q. And he has his initials on the same line showing that he issued a certificate, a grading certificate which covered these 8 cases of eggs?

A. Yes, sir, to the shipping company.

Q. You understand, do you not, the egg grading certificates that are issued by inspectors? You have looked at many of them, have you not?

A. Yes, I think I understand them.

(Testimony of Henry Eugene Berman.)

Q. Did you examine the certificate which covered the examination of these eggs by Major Evans?

A. I don't believe I [3419] have, Mr. Pratt.

Q. Didn't you look at the paper which I think was marked for identification by Mr. Faulkner, or at his suggestion?

A. No, I have not seen any of those.

Q. You have not seen that?

A. I have seen them but I haven't paid any attention to them or scrutinized them very closely.

Q. This is a photostatic copy of it and I am wondering if you will——

Mr. Faulkner: Just a moment. We object to the witness being shown a paper that is not in evidence and being cross examined on a paper that was merely offered in this record for the purpose of refreshing the recollection of Major Evans. It is not in evidence in this case. It is not proper cross examination. He was not examined on his direct examination about What Major Evans did.

Mr. Pratt: It was a paper that was marked for identification, as Mr. Faulkner says. It was used by Major Evans to refresh his recollection. I do not know that I care to pursue the matter, but it seems to me proper to interrogate this witness in regard to such an egg grading certificate when his familiarity with such certificates is undoubted. But I won't press it.

Q. In the disposition of cases of eggs there on the floor of your plant, Mr. Berman, they were all

(Testimony of Henry Eugene Berman.)

segregated in various places, were they, of the different grades of eggs? [3420]

A. Yes, sometimes after they arrived they were segregated very often not immediately but at sometime everything was put in its place and there was a place for everything.

Q. And that occurred after the eggs were graded in your candling room, is that right?

A. Very few eggs that were handled were candled in our candling room in comparison with the vast proportion of eggs we handled.

Q. Eggs that came from your other plants, like Petaluma, for instance, had already been graded, and there were indications on the label of what they were, is that right?

A. Not necessarily indications of what they were; possibly there were indications of what size they were. We never knew exactly what they were until they were inspected by the Department of Agriculture. That was the reason for the inspection.

Q. When eggs were to be inspected by the Department of Agriculture, didn't you point out to the inspector what he might expect a certain group of eggs, cases of eggs, to be?

A. I had very little to do actually with the handling of eggs for the inspectors of the Department of Agriculture. However, it would not be unnatural to assume that an indication might be given as to the quality we expected those eggs to be.

Q. Then, as you have said, the eggs were segregated on the floor. There would be AA's at one

(Testimony of Henry Eugene Berman.)

place, perhaps AA Mediums at one place, and AA Large in another, is that right? [3421]

A. That is correct.

Q. And then A Mediums and A Large, perhaps, in another place? A. Perhaps.

Q. Did you have any place designated for segregating Dirties and Light Dirties on the floor of your plant?

A. Well, when I am answering these questions I am answering questions which in reality should be answered by somebody else who had charge of the floor.

Q. I am asking you, Mr. Berman.

A. Yes, sir, and I am trying to answer you. I am not reluctant at all to answer you if I know for sure. In my own room I did segregate every grade that I handled in there that is part of my inventory, and I had various grades, and from time to time a fluctuating inventory, sometimes quite large and sometimes possibly only a few cases. I won't say that I always put the same type of eggs in the same particular position, but it was always natural to keep each type of egg separate from any other type of egg.

Q. And you knew where they were?

A. In my own room, not on the floor, because there wasn't a general pattern used on the floor. One day I might have a row of eggs that might all be Medium AA, and there might be an empty row next to it. If a truckload of Large AA came in they would go in that empty space, and when that

(Testimony of Henry Eugene Bergan.)

row became empty, that row of Mediums, and a row of Jumbos or something else came in, they would go in where the Mediums were. We didn't have enough room and there was too much merchandise to keep specific places for the same merchandise all the time. That would be absolutely impossible.

Q. You said your room?

A. That is right.

Q. I didn't know you had a room. I thought you just had an open space for a desk.

A. No, sir, we have a picture that showed I did have a room, and my room very often was entirely closed off from the rest of the plant by a set of two rolling doors.

Q. How large was this room?

A. The room I had was, to guess, would be about 18x25, possibly.

Q. Quite a large room?

A. Large in itself, but not in respect to the rest of the plant.

Q. And you had cases of eggs in that room?

A. Yes, I always did.

Q. Did you have some particular place for storing or piling cases of Dirties and Light Dirty eggs?

A. If they were within part of my inventory in my room.

Q. And so you would know where Light Dirties and Dirties were if they were there?

A. If they were in my room, yes, I would know.

Q. In describing your room are you referring

(Testimony of Henry Eugene Berman.)

to the time during which eggs were being delivered to the War Shipping Administration?

A. That room still exists. [3423]

Q. It is the same room?

A. I still work in that same area.

Q. And the transaction in regard to the steamship Oliver, that was the 23rd of May, 1944, was it not?

A. Yes, it was.

Q. And you do not know, I believe you have already testified, what truck driver delivered those eggs?

A. I have no way to tell.

Q. At that time Nystrom was no longer in your employ, was he?

A. No, Nystrom left on the 12th and the 13th.

Mr. Pratt: That is all.

Mr. Faulkner: I thought you wanted the witness to identify——

Mr. Pratt: Oh, yes, I overlooked that. I asked the other day that the witness produce some invoices, invoices from Nye & Nissen to the City Sales Division, and also further invoices from the City Sales Division or from Nye & Nissen City Sales Division to the various shipping companies who are agents for the Government.

The Court: Are they available?

Mr. Pratt: And in my conversation with Mr. Faulkner it was arranged that they would be brought here today or shortly, and I suggested to him that I would like to reserve the right to further cross examine this witness after these papers have been examined by me.

(Testimony of Henry Eugene Berman.)

The Court: Very well.

Mr. Pratt: And I think Mr. Faulkner made no objection.

Mr. Faulkner: That is correct. [3424]

Mr. Pratt: I would like to have the record stand in that way.

The Court: Very well.

Mr. Pratt: Reserving the right to recall Mr. Berman for further cross examination.

The Court: Are those the ones you have in mind?

Mr. Faulkner: Yes, they should be marked for identification.

The Court: Let them all be marked for purposes of identification.

Mr. Pratt: Can't they be marked as one exhibit?

Mr. Faulkner: Yes, they can be marked as one exhibit for identification.

The Court: And you can segregate them then if you wish.

Mr. Faulkner: If the Court please, in this assembly of sales from Nye & Nissen City Sales to the War Shipping, a lot of these tags are already in evidence——

The Court: All of these will go in together for purposes of identification, and then you may segregate them, examine them, either side, and use such portions of them as you wish.

Mr. Faulkner: The first group of yellow tags, the first of which is No. 17760, represents, your Honor, the tags of sales of Nye & Nissen City Sales

(Testimony of Henry Eugene Berman.)

to ships on the waterfront, that is, War Shipping Administration ships, of cheese.

Mr. Pratt: Yes, all Cheddar cheese. [3423]

Mr. Faulkner: Then there are the invoices, copies of invoices of Nye & Nissen, Inc., to certain ships on the waterfront covering the sales of Cheddar cheese. Then there are inter-company invoices between Nye & Nissen, Inc., and Nye & Nissen City Sales covering the invoicing of cheese from one department to another. The dates covered are in accordance with Mr. Pratt's request. May they be marked as one exhibit?

The Court: Very well.

(The documents were marked U. S. Exhibit 177 for Identification.)

The Court: You may take the witness.

Mr. Sullivan: Q. Mr. Berman, Mr. Pratt——

Mr. Pratt: Just one minute.

Mr. Sullivan: I beg your pardon.

Mr. Pratt: I want to ask if these exhibits which are marked for identification may be taken by me to my office during the noon recess to examine? It would be almost impossible to examine them here in the court room. Is there any objection to that? I do not want to be unduly responsible for exhibits but——

The Court: Is there any objection?

Mr. Faulkner: Well, I have never taken an exhibit to my office, your Honor, in twenty years. I do not want to be in the position of examining them,—— [3426]

(Testimony of Henry Eugene Berman.)

The Court: Examine them in the court room, then, if there is any question at all.

Redirect Examination

Mr. Sullivan: Q. Mr. Berman, Mr. Pratt asked you on several occasions about your being president of the Coast Egg Products Corporation, and he continuously alluded to that in response to your answers, and I will ask you at this time to state what salary you received from the Coast Egg Products Corporation on December 31, 1943, when that company was dissolved? A. $75 a week.

Q. And prior to that time had you received a greater or a less salary from Coast Egg Products?

A. No. Starting from the bottom—right previous to that I think the last salary I had was $60 a week or $65.

Q. Did you receive a greater salary from Coast Egg Products Corporation when you were made president of that company?

A. I certainly was not.

Q. When you went over to the City Sales organization of Nye & Nissen after the dissolution of Coast Egg Products, what salary did you receive, for instance, during the year 1944?

A. I continued at $75 a week.

Q. Now, Mr. Pratt has asked you several questions about the method of your entries of deliveries of stamped eggs in this little book, here, and particularly the ten first pages thereof, which are Defendants' CX-1 in evidence, and I will ask you

(Testimony of Henry Eugene Berman.)

this question: When you filled the respective War Shipping Administration orders with eggs did you use stamped or unstamped eggs?

A. I am sorry. I didn't get the whole question.

Mr. Sullivan: May the question be read, your Honor?

The Court: Read it, Mr. Reporter.

(Question read.)

A. Oh, no, we used stamped eggs out of our stock pile that was there available for that express purpose.

Mr. Sullivan: Q. Where was that stock pile?

A. The stock pile was on the floor of Nye & Nissen. However, at times there may have been a few cases in my particular room, a part of my inventory, if you like—I can explain how that would happen.

Q. Mr. Berman, I will come to that later, but I want to ask you now this question: Had the eggs belonging to this stock pile, which as you say were stamped, had they been stamped by a Department of Agriculture man? A. Definitely.

Q. When with reference to your filling any particular delivery in your book which is CX-1 in evidence, when with reference to filling any of those deliveries were those eggs stamped by the Department of Agriculture?

A. At some prior date. Exactly how long before I do not know. I do know, however, that it might have been or could have been any time up to

(Testimony of Henry Eugene Berman.)

21 days before the delivery. That was the WSA regulations at that time. [3428]

Q. In other words, before this delivery ever came to your attention, a Department of Agriculture man had inspected eggs on the floor of your plant, is that correct?

A. That was the procedure.

Q. After you filled the War Shipping Administration order with the eggs did you make any entry in this?

A. Yes, I made the entry in the book you have at hand there.

Q. And after this entry was made in the book did an inspector of any Government organization, if you know, consult this book?

A. Yes, they consulted that book daily.

Q. Did he consult it for your purposes or for somebody else's purpose?

A. The sole purpose——

Mr. Pratt: That has all been gone over and I object to it as repetition.

Mr. Sullivan: If your Honor please, Mr. Pratt made great argument in his questioning about this and took up the question of the Edmund Ross to show a disparity between the invoice prepared by Mr. Berman and the entry in the book, and I am going to show that that argument does not hold good, at all, that Mr. Berman had nothing to do with the preparation of the second egg-grading certificate.

The Court: Read the question, Mr. Reporter.

(Testimony of Henry Eugene Berman.)

(Question read.)

The Court: The objection is sustained.

Mr. Sullivan: Exception. [3429]

Q. Mr. Berman, after you had made the entry that you have described, did a Department of Agriculture man use your book for any purpose?

Mr. Pratt: I object to that. That has all been covered.

Mr. Sullivan: Your Honor, the point of this is, it is very important to bring this question clearly before the jury, and the point of the question is this: These eggs had already been inspected and stamped and were used by Mr. Berman. Now, an objection is made by counsel for the Government to what he claims to be a disparity between something prepared by Mr. Berman and something which he had no connection with, namely, an egg-grading certificate.

The Court: Read the question.

(Question read.)

The Court: Q. What happened, if anything?

A. The Department of Agriculture man would copy the information out of my book into a book of his own in order to enable him to make a certificate for the shipping company.

Mr. Sullivan: Q. That certificate was not for your organization, at all, was it?

A. We never saw that certificate at any time until we came into court here.

Q. Mr. Pratt has referred to Exhibit 161 in evi-

(Testimony of Henry Eugene Berman.)

dence. I will show you, Mr. Berman, that exhibit, purporting to be the typewritten invoice to the Edmund Ross, and I will ask you, as Mr. Pratt did, to indicate what you find, if anything, with respect to a shipment on eggs on there.

A. Fifty cases of eggs, Processed, Grade AA. The size is not designated.

Q. Was this typewritten invoice prepared from a handwritten invoice prepared by you?

A. That was the usual procedure.

Q. Now, I will show you, as Mr. Pratt did, Mr. Berman, Defendants' Exhibit AV in evidence, purporting to be an egg grading certificate of the Department of Agriculture, covering the shipment to the Edmund Ross. Have you examined that?

A. Yes, I have seen this before.

Q. May I see it just a minute, please? Mr. Berman, did you have anything to do with the preparation of that certificate?

A. Nothing whatsoever, Mr. Sullivan.

Q. Did you request that the certificate be prepared?

A. No, sir, this was prepared upon the request of the shipping company in conformity with the regulations of the WSA.

Q. Did that certificate ever come in your possession?

A. Never saw it before I was on the stand.

The Court: Q. Who prepared it, if you know?

A. Yes, sir, it is prepared by the Department of Agriculture and it is signed by Gordon C. Reed.

(Testimony of Henry Eugene Berman.)

Q. Who is Gordon C. Reed?

A. Gordon C. Reed is an inspector for the Department of Agriculture, the same man who initialed my book.

The Court: Very well.

Mr. Sullivan: Q. And I think your explanation to Mr. Pratt [3431] was that if there was any disparity between the information set forth in your invoice which you did have something to do with, and the information set forth in this certificate, that it was not your fault at all, isn't that correct?

Mr. Pratt: I object to that, if the Court please, the character of the question and the fact that it is repetition.

The Court: The objection is sustained. Let it go out and let the jury disregard it.

Mr. Sullivan: Exception.

Q. Now, I will show you an exhibit which I do not think Mr. Pratt showed you, Mr. Berman, Exhibit No. U. S. 154 in evidence, purporting to be a typewritten invoice pertaining to the ship Czechoslovakia Victory, and I will ask you if you recognize that exhibit.

A. Yes, sir; I testified to this for you on direct examination, I think.

Q. That typewritten invoice, which is Exhibit 151 in evidence, was prepared, was it not, from your handwritten tag as you have testified?

A. It must have been.

Q. Do you find any reference on this Exhibit

(Testimony of Henry Eugene Berman.)

151 in evidence pertaining to a shipment of eggs to the ship Czechoslovakia Victory?

A. It solely concerns eggs?

Q. Will you read, please, what item of eggs you find on there?

A. 25 cases of eggs, Medium Grade A.

Q. 25 cases of eggs, Medium Grade A?

A. Yes, sir.

Q. Is that correct? A. Yes, sir. [3432]

Q. Now, I will show you, Mr. Berman, Defendants' Exhibit AQ in evidence, purporting to be the egg grading certificate prepared by Mr. Reed for the shipping company, covering that shipment to the ship Czechoslovakia Victory, and I will ask you to examine it. A. I have.

Q. Do you find a reference in there to the eggs that were shipped and covered by that certificate?

A. Yes, the same order number, the same boat, and 25 cases of eggs.

Q. Will you read what it says on the certificate with reference to the quality of eggs?

A. U. S. Grade AA Mediums.

Q. Has Mr. Reed on this certificate which he prepared for the shipping company a higher quality of eggs than you invoiced him for?

Mr. Pratt: I object to that, if the Court please. It is a conclusion, argumentative, and otherwise improper.

Mr. Sullivan: If the Court please, that was just the point of Mr. Pratt's examination of this witness with respect to the Ross. He tried to maintain

Testimony of Henry Eugene Berman.

through interrogation that this witness was invoicing a ship for a higher quality of eggs than was revealed by the certificate of the Department of Agriculture inspector, and the purpose of this examination is to show that on another ship they invoiced them for a less quality.

Mr. Pratt: I will withdraw my objection.

Mr. Sullivan: Thank you. Will you read the question? [3433]

(Question read.)

A. Yes, he has. He has indicated here the eggs are U. S. Grade AA Medium.

Mr. Sullivan: Q. Mr. Berman, I will show you Defendants' Exhibit CW, purporting to be one of those yellow tags that you testified about. It is the top one, Mr. Berman. I will ask you to examine that. Have you examined it?

A. Yes, I have.

Q. Mr. Pratt asked you last week when we were on your cross-examination if you could identify a small mark which appears on the bottom of this certificate, a sort of a check, and then "M", and I believe you testified that you identified that as the signature or initial, rather, of Mary Foudy, and you also said—I do not want to misquote you—that you would try to think if anybody else used an "M". Now, since you argued that question for Mr. Pratt have you any additional information with respect to that? A. Yes, I have.

Q. Will you give it to us and to the jury, please?

A. When I returned to the office, in order to

(Testimony of Henry Eugene Berman.)

make sure that I had not given any wrong information to Mr. Pratt or anybody else, I asked Mary Foudy if she initialed these invoices when she checked the extensions with the letter "M". She then informed me that she used the letter "F".

Mr. Pratt: If the Court please, this is hearsay, and I do not like to make objections to that testimony, but this [3434] is so obviously improper——

Mr. Faulkner: It is not hearsay at all.

Mr. Pratt: He is telling what Mary Foudy told him.

Mr. Faulkner: What difference does it make? She is not on trial.

The Court: The objection is sustained. Let it go out and let the jury disregard it for any purpose in this case.

Mr. Faulkner: Exception.

Mr. Sullivan: Q. Do you know whose initial that is? A. Yes, I do now.

Q. Whose initial is it?

A. Ester Monahan.

Mr. Sullivan: May the record, if the Court please, and with your Honor's approval, show that the defendants reserve the right to interrogate Mr. Berman on further redirect examination in connection with any matters developed by Mr. Pratt?

The Court: That follows if any new matters develop you have a right to cross-examine in that event, of course.

Mr. Sullivan: Yes, your Honor.

The Court: Are you through with this witness?

Mr. Pratt: That is all.

DAVID D. MOOSMAN,

called as a witness for Defendants; sworn.

The Clerk: Q. Will you state your name?

A. David D. [3435] Moosman.

Direct Examination

Mr. Faulkner: Q. Mr. Moosman, you are an inspector in the United States Department of Agriculture? A. Yes, sir.

Q. And you are here in response to a subpena that requires you to bring with a certificate dated June 3, 1940, No. 498, covering 700 cases of eggs. Have you got that certificate? A. Yes, sir.

Q. May I have it, please?

A. (Witness handed a document to Mr. Faulkner.)

Q. Mr. Moosman, I show you an egg-grading certificate No. 498E, United States Department of Agriculture, dated June 3, 1940, and ask you if that egg-grading certificate represents an inspection of eggs made by you on or about that date, as an inspector of the Department of Agriculture?

A. Yes, sir.

Q. If you give me a counterpart of one of those I can let you keep that and follow along. Any one of them will do. Mr. Moosman, the certificate which you hold in your hand, which I will ask to be marked at this time for identification so we won't get mixed up——

The Witness: Change it with the other one. I think it is the same day.

(Testimony of David D. Moosman.)

(The document was marked Defendants' Exhibit CZ for Identification.)

Mr. Faulkner: Q. In connection with this exhibit CZ for [3436] Identification, Mr. Moosman, is that an official record of the United States Department of Agriculture taken from your files pursuant to the subpena served upon you?

A. Yes, sir.

Q. Did you make the inspection of the eggs covered by that certificate?

A. This is the record, yes sir.

Q. And you made the inspection?

A. Yes, sir.

Q. How many cases of eggs did you inspect?

A. On this particular certificate?

Q. Yes. A. There were 700.

Q. And to whom were the eggs to go?

A. They were to go to the supply ship Arctic.

Q. The United States Navy? A. Yes, sir.

Q. What quality of eggs did you find those eggs to be?

A. They graded U. S. Extras, retail grade.

Q. Where was the inspection made?

A. The record here shows 324 Townsend Street.

Q. Is it your testimony that you made that inspection at 324 Townsend Street?

A. According to this record, yes, sir.

Q. Mr. Moosman, have you a distinct recollection of having inspected that 700 cases of eggs at 324 Townsend Street? A. No, sir.

Q. In June, 1940, what was the general practice

(Testimony of David D. Moosman.)

of the inspectors of the Department of Agriculture with respect to inspecting eggs consigned to the supply ships for the United States Navy?

A. The general practice was to look at them on the dock alongside the ship. [3437]

Q. That certificate shows the dock, does it not?

A. This certificate shows that they were inspected at 324 Townsend Street.

Q. I say that certificate shows the dock does it not? A. Oh, yes, Pier 46.

Q. Now, if you assume, Mr. Moosman, what is the name of the ship? A. The USS Arctic.

Q. If you assume, Mr. Moosman, that the USS Arctic was at dock 46 on the 31st of May, 1940, and remained there until sometime after the 15th of June, where did you inspect the eggs if the ship was at the pier?

Mr. Pratt: I object to that.

The Court: Read the question.

(Question read.)

The Court: Q. Have you any independent recollection?

A. I have no independent recollection.

Mr. Faulkner: Q. Now, Mr. Moosman, didn't you tell me the other day that the thing that was settled in your mind where you made a ship inspection was whether or not the ship was at the pier at the time of the inspection?

Mr. Pratt: I object to this, if your Honor please.

Mr. Faulkner: I am trying to have a fair answer

(Testimony of David D. Moosman.)

to these questions after having to go to Washington even to get a man to——

Mr. Pratt: I object to that statement. That is entirely [3438] improper.

The Court: Those statements haven't any place before the jury. Let them go out for the purpose of this case. Let us proceed.

Mr. Faulkner: Q. Mr. Moosman, did you not tell me on Saturday morning that the thing that would clear up in your mind where you made an inspection was whether or not the ship to which the eggs were to go was or was not at the pier indicated on the certificate?

Mr. Pratt: I object to this question. There is certainly no showing of hostility on the part of the witness.

The Court: In the interest of time I will allow him to answer. Read the question.

(Question read.)

A. I said that the general practice being that the inspections were made alongside the dock, that it would seem logical that it would be made there. But there has been an exception. The Navy called up and asked for an exception to be made to the general practice, but I don't know just when that was. I have no recollection of the exact time.

Mr. Faulkner: Q. That exception, Mr. Moosman, was an exception where the ship involved was undergoing repairs at Mare Island, isn't that correct? A. That is right.

Q. I ask you again, assuming that you knew as

(Testimony of David D. Moosman.)

a fact that the Arctic was at Pier 46 from the 31st of May on beyond the dates [3139] of these various inspections, with that fact before you, that certificate with the name of the ship and with the pier indicated on your certificate, with those facts, can you tell me now where, in your best judgment, that inspection was made?

Mr. Pratt: Now, I object to that.

The Court: The objection is sustained. It clearly calls for the opinion and conclusion of this witness.

Mr. Faulkner: Q. Assuming, Mr. Moosman, that the ship Arctic was at Pier 46 from the 31st of May on through June 3, 4, 5 and 6, and thereafter, and directing your attention to your certificate, which shows Pier 46 on it, I will ask you where you made that inspection.

Mr. Pratt: Now, I object to that for the same reason.

The Court: If he knows where he made the inspection he may answer.

Q. Where did you make the inspection?

A. All I have here is a record. I don't recall where the inspection was made, but the record here shows that it was made at 324 Townsend Street.

Mr. Faulkner: Q. Then you have no recollection of where the inspection was made, is that your testimony?

A. No, I do not recall this particular delivery.

Q. But you do know that the practice was to

(Testimony of David D. Moosman.)

inspect all shipments to the Navy at the pier; that is correct, is it not?

Mr. Pratt: I object to that.

A. That was the general practice except when exceptions were [3440] made by the Navy.

Q. And you remember an exception with respect to the repair of a boat at Mare Island?

A. I do remember that exception.

Q. Mr. Moosman, the quality of eggs called for by that certificate 498-E is what?

A. This 498 is 700 cases.

Q. The quality?

A. The quality, U. S. Extras, Large, retail grade.

Mr. Faulkner: I offer that certificate in evidence, your Honor.

(The document was marked Defendants' Exhibit CZ in evidence.)

Mr. Faulkner: Q. I show you certificate, Mr. Moosman, No. 499-E. The date on that certificate is June 3, 1940, is it not? A. June 3, 1940.

Q. I show you certificate No. 499-E and ask you if that is an official egg grading certificate of the United States Department of Agriculture.

A. That is a copy of the official egg grading certificate.

Q. Is that the official copy?

A. That is right.

Q. What is the number?

A. This is No. 499.

(Testimony of David D. Mossman.)

Q. And then there is a printed "E" after it, is there not? A. That is right.

Q. Did you make the inspection of eggs covered by that certificate? A. I did.

Q. To whom did the eggs go?

A. To the USS Arctic.

Q. For the United States Navy?

A. For the United States Navy. [3441]

Q. What quantity of eggs were covered by that certificate?

A. U. S. Extras, Large retail grade.

Q. No, that is the quality, is it not?

A. That is right.

Q. Now, quantity?

A. Oh, the quantity is 400 cases.

Q. I will ask you if looking at that certificate your answers would be the same in respect to the place that you made that inspection as they were in connection with the inspection covered by certificate 498-E. A. They would.

Q. They would be the same?

A. They would be the same.

Q. And you do not have any independent recollection——

A. I do not.

Q. Of where the eggs covered by that certificate were inspected, is that right? A. I do not.

Mr. Faulkner: I offer that certificate in evidence, your Honor.

The Court: It may be admitted and marked.

(Testimony of David D. Moosman.)

(The certificate was marked Defendants' Exhibit DA in evidence.)

Mr. Faulkner: Q. Have you, in response to this subpena, produced in court a certificate dated June 4, 1940, No. 3309, covering 300 cases of eggs?

A. Yes, sir.

Q. You hold onto it. Mr. Moosman, is that certificate which you hold in your hand, an official copy of an egg grading certificate, part of the files of the United States Department of Agriculture?

A. Yes, sir. [3442]

Q. And the number of that certificate is No. 3309? A. Yes, sir.

Q. And the date is June 4, 1940?

A. Yes, sir.

Q. Did you make the inspection of eggs covered by that certificate? A. Yes, sir.

Q. What quantity of eggs were covered by that certificate? A. 300 cases.

Q. What quality of eggs were covered by that certificate? A. Quality?

Q. Yes.

A. U. S. Extras, Large, retail grade.

Q. To whom did the eggs go?

A. To the Navy, the U. S. S. Arctic, supply ship Arctic.

Q. Pier 46? A. Pier 46.

Q. If I asked you the same questions in relation to where you made the inspection of the eggs covered by that certificate, would your answers be the same?

(Testimony of David D. Moosman.)

A. They would, yes, sir.

Q. —— as the questions asked in relation to certificate No. 498-E?

A. They would be the same.

Mr. Pratt: May I inquire, does that mean that those inspections were made at 324 Townsend Street?

The Witness: Yes, sir.

Mr. Faulkner: I beg your pardon.

Q. Mr. Moosman, did you say at any time in this courtroom that you have a recollection of inspecting those eggs at 324 Townsend Street?

A. I don't recall. I am just taking from this certificate. The certificate shows that the inspection [3443] was made at 324 Townsend Street.

Q. Yes, but the certificate also shows that the ship was at Pier 46, doesn't it? A. Yes.

Q. And your practice was to inspect all eggs at the pier except when there was——

Mr. Pratt: I object to that, if the court please. He is testifying about this particular inspection of eggs. As I understand it, each of these certificates shows the inspection was made at 324 Townsend Street.

Mr. Faulkner: I will withdraw it and start all over. I thought I could cover all these certificates by a simple question. Now I turn back to certificate No. 499.

Q. I will ask you, Mr. Moosman, if at the time you made that particular certificate covering those particular eggs, if it was or was not the practice